

REMARKS

This communication is being filed in response to the final Office Action having a mailing date of August 3, 2009. Independent claim 34 is amended as shown to address an objection raised in the final Office Action, by making a typographical correction to add a punctuation mark (period) to the end of the claim. Because such amendment to claim 34 does not raise new issues that would require further search and/or consideration, it is respectfully submitted that such amendment to claim 34 can be entered.

Claims 1-33, 39-42, 47-50, and 56-59 were previously canceled without prejudice. With this filing, claims 34-38, 43-46, 51-55, 60-74 are pending in the application.

I. Affidavit previously submitted on October 7, 2008

An affidavit of Prajakta S. Joshi was previously submitted on October 7, 2008 for the purposes of traversing the rejections set forth in the previous final Office Action of April 11, 2008. In the prior amendment/response of April 23, 2009, this affidavit was again relied upon in traversing the rejections set forth in the previous Office Action of December 23, 2008. In response to this previously submitted affidavit, page 2 (section 3) of the present final Office Action stated the following (emphasis in original):

“It should be noted that the traversal using 37 CFR 1.132 is to rebut a rejection under 35 USC 102(a) type (emphasis added): i.e., an affidavit under 37 CFR 1.132 shows that the inventorship of the application is correct in that the reference discloses subject matter derived from the applicant rather than invented by the author...notwithstanding the authorship of the article...The White Paper is a statutory bar reference under 35 USC 102(b). The reference of [Alteon in view of the Cisco Document] both appear not being derived from the inventorship of the application.”

The above-quoted statement(s) from the final Office Action again represents a misunderstanding by the Examiner of the purpose and content of the previously filed affidavit. The Examiner seems to be interpreting the previously filed affidavit in accordance with MPEP § 716.10 that discusses an affidavit filed under 37 CFR 1.132 to show “attribution” (*e.g.*, an affidavit to show that the relevant portions of the reference originated with or were obtained from applicant).

However, as clearly set forth by the other sub-sections 716.01-716.09 of MPEP § 716, the “attribution” of MPEP § 716.10 is not the sole basis for filing an affidavit under 37 CFR 1.132. Indeed, the previously filed affidavit was not intended to present an “attribution” argument. Rather, the previously filed affidavit under 37 CFR 1.132 was submitted to present evidence to traverse the rejection, or more particularly as specified in MPEP § 716 (emphasis ours):

“716 Affidavits or Declarations Traversing Rejections, 37 CFR 1.132

37 CFR 1.132 Affidavits or declarations traversing rejections or objections. When any claim of an application or a patent under reexamination is rejected or objected to, any evidence submitted to traverse the rejection or objection on a basis not otherwise provided for must be by way of an oath or declaration under this section.

It is the responsibility of the primary examiner to personally review and decide whether affidavits or declarations submitted under 37 CFR 1.132 for the purpose of traversing grounds of rejection are responsive to the rejection and present sufficient facts to overcome the rejection.”

The contents of the previously filed affidavit were intended to provide testimonial evidence as to why the reference(s) do not provide/teach the subject matter recited in the claims.

Thus, while the White Paper may have been used by the Examiner to reject the claims under 35 U.S.C. § 102(b), the mere fact that 35 U.S.C. § 102(b) was used as a basis for rejection does not prevent a proper affidavit under 37 CFR 1.132 (which presents evidence “to traverse the rejection”) from being submitted and duly considered, since for example the previously filed affidavit provided testimonial evidence that the subject matter of the present claims was not present in or taught by the technology described in the White Paper.

Furthermore, the Examiner misinterprets the content and intent of the previously filed affidavit, by interpreting the previously filed affidavit as attempting to prove that the subject matter of the Alteon and Cisco documents were “derived from the inventorship of the application.” Again, it is emphasized herein that the previously filed affidavit was not presented to support an attribution/derivation argument—rather, the previously filed affidavit was for the purpose of providing testimonial evidence that the subject matter of the present claims was not present in or taught by the technology described in the Alteon and Cisco documents.

On page 3 of the final Office Action, the Examiner alleged that “The affidavit clearly admits the claims read on the White Paper.” This allegation by the Examiner is traversed herein—there is no such admission in the previously filed affidavit. As extensively stated and explained throughout the previously filed affidavit, “the claims of the present application distinguish over the GSLB technology described in the White Paper.” Accordingly, the Examiner’s allegation of said admission is clearly without merit.

Thus, the Examiner should give the previously filed affidavit due consideration/reconsideration and weight.

II. Discussion of the claims and cited references

The final Office Action rejected claims 34-38, 43-46, 51-55, and 60-74 under 35 U.S.C. § 102(b) as allegedly being anticipated by the White Paper (entitled “Server Load Balancing in Today’s Web-Enabled Enterprise”). The final Office Action also rejected claims 34-38, 43-46, 51-55, and 60-74 under 35 U.S.C. § 103(a) as allegedly being unpatentable over the Alteon document (entitled “Enhancing Web User Experience with Global Server Load

Balancing”) in view of the Cisco document (entitled “Configuring the CSS Domain Name Server”).

The rejection of claims 34-38, 43-46, 51-55, and 60-74 are traversed herein.

A. Independent claim 34

Independent claim 34 as presented herein recites, *inter alia*, “obtaining at one of said site switches mapping information that provides a translation between a private virtual IP address, configured at said site switch and associated with said at least one host server corresponding to said site switch, and a public virtual IP address” and “providing, by said site switch, said public virtual IP address to at least one load balancing controller.” It is respectfully submitted that the final Office Action has not cites any passage from the references that meets these specific limitations.

With regards to the recitation “obtaining at one of said site switches mapping information that provides a translation between a private virtual IP address, configured at said site switch and associated with said at least one host server corresponding to said site switch, and a public virtual IP address,” page 4 (section 5) of the final Office Action cites “a Site such as box 4 in the Figure, having a GSLB controller” of the White Paper. However, the final Office Action nowhere identifies where the limitation “obtaining at one of said site switches mapping information that provides a translation...” of this recitation is specifically found/taught in the Figure and accompanying description. Indeed, as fully explained in the previously filed affidavit, such a feature of “obtaining ... mapping information” was not present in the GSLB technology that existed at the time of the White Paper.

With regards to the recitation of “providing, by said site switch, said public virtual IP address to at least one load balancing controller,” page 5 (section 5) of the final Office Action states that “Controller GSLB’s respon[ds] with the information of the Hong Kong web host for load balancing...the controller...returns the address to the local DNS of a client in San Francisco.” Such statements by the Examiner do not support the rejection. For instance, the recitations in claim 34 specifically state that the public virtual IP address is provided “to at least

one load balancing controller.” In contrast, the statements by the Examiner to support the rejection only describe an address being provided “from” (rather than “to”) the GSLB controller (*e.g.*, “Controller GSLB’s respon[ds] with the information of the Hong Kong web host” and “the controller...returns the address to the local DNS”).

In view of at least the above reasons, claim 34 is allowable over the White Paper.

With regards to the Alteon document, page 8 (section 7) of the final Office Action alleges that “the return of ‘3’ with information of site B” meets the limitation in claim 34 of “providing, by said site switch, said public virtual IP address to at least one load balancing controller” (emphasis ours). This allegation by the Examiner is traversed.

As clearly taught by the Alteon document on page 2 (Figure One), site B’s virtual IP address is returned “to the client’s local DNS” at “3”. Thus, since the Alteon document teaches returning the virtual IP address to the client’s local DNS, rather than to at least one load balancing controller, the Alteon document does not meet at least the limitation of “providing, by said site switch, said public virtual IP address to at least one load balancing controller” in claim 34.

Furthermore, while page 8 (section 7) of the Alteon document mentions DSSP (a.k.a. distributed site state protocol, which the Examiner appears to be interpreting as some sort of load balancing process), the Alteon document clearly teaches on pages 4-5 that DSSP is used by the “DNS authoritative name server” and mentions nothing about DSSP being implemented/used by the client’s local DNS. The “DNS authoritative name server” is clearly not the same as the “client’s local DNS” that receives site B’s virtual IP address at “3.” Furthermore, a local DNS inherently does not perform load balancing since such a local DNS only operates to resolve a domain name for its a local client. Accordingly, it is not accurate to interpret the “client’s local DNS” as being the same as the “load balancing controller” recited in claim 34.

With regards to the Cisco document, this document was merely cited for allegedly teaching translation between public and private virtual IP addresses. The Cisco document is no

more relevant than the Alteon document—both documents do not teach the features recited in claim 34.

Reference is also made again herein to the previously filed affidavit, which further explains the differences between the subject matter of the present claims, versus the teachings of the Alteon and Cisco documents.

In view of at least the above reasons, claim 34 is also allowable over the Alteon and Cisco documents.

B. Independent claims 43, 51, 63, 67, and 71

Independent claims 43, 51, 63, 67, and 71 recite subject matter that generally corresponds to the subject matter of claim 34 previously explained above, and are allowable by analogy.

III. Conclusion

If there are any informalities or questions that can be addressed via telephone, the Examiner is encouraged to contact the attorney of record (Dennis M. de Guzman) at (206) 407-1574.

The Director is authorized to charge any additional fees due by way of this Amendment, or credit any overpayment, to our Deposit Account No. 500393.

All of the claims remaining in the application are believed to be allowable.
Favorable consideration and a Notice of Allowance are earnestly solicited.

Respectfully submitted,
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